

FORTY-SEVENTH DAY

(Thursday, April 20, 1989)

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejada, Truan, Uribe, Washington, Whitmire, Zaffirini.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

God of Peace, this morning we acknowledge the only difference between stumbling blocks and stepping stones is the way we put them to use. Grant that we would not use them to impede or cause failure, but use them to support and undergird what is helpful.

Bless the work of the session today, and may all the works here be Thy works. In Your name. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

BILLS AND RESOLUTION SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolution:

S.B. 227

S.B. 534

H.B. 1467

H.C.R. 212

REPORTS OF STANDING COMMITTEES

Senator Montford submitted the following report for the Committee on State Affairs:

C.S.S.B. 94

Senator Santiesteban submitted the following report for the Committee on Natural Resources:

S.B. 1635

S.B. 1216

H.C.R. 17

C.S.S.B. 497

C.S.S.B. 866

C.S.S.B. 1067

C.S.S.B. 1206

H.B. 1417

C.S.S.B. 1636

C.S.S.B. 1646

C.S.S.B. 1647

C.S.S.B. 1648

C.S.S.B. 1667
C.S.S.C.R. 75
C.S.S.B. 422

Senator Glasgow submitted the following report for the Committee on Jurisprudence:

C.S.S.B. 437
C.S.S.B. 1012

Senator Brooks submitted the following report for the Committee on Health and Human Services:

S.B. 1143

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 171

Senator Brooks submitted the following report for the Committee on Health and Human Services:

S.B. 1672

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 575
H.B. 1168

Senator Zaffirini, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 1400

CO-AUTHOR OF SENATE BILL 801

On motion of Senator Ratliff and by unanimous consent, Senator Lyon will be shown as Co-author of **S.B. 801**.

CO-AUTHOR OF SENATE BILL 822

On motion of Senator Parmer and by unanimous consent, Senator Truan will be shown as Co-author of **S.B. 822**.

CO-AUTHOR OF SENATE BILL 1668

On motion of Senator Zaffirini and by unanimous consent, Senator Krier will be shown as Co-author of **S.B. 1668**.

CO-SPONSOR OF HOUSE BILL 729

On motion of Senator Glasgow and by unanimous consent, Senator Caperton will be shown as Co-sponsor of **H.B. 729**.

MESSAGE FROM THE HOUSE

House Chamber
April 20, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 103. In memory of Mrs. Jean Mills.

S.C.R. 123. Commending Dorothy Spencer Garry.

S.C.R. 6. Urging the Federal Energy Regulatory Commission to reconsider the agreement allowing natural gas pipeline construction between Canada and the United States.

H.C.R. 197. Recognizing the Salado Historical Society.

H.C.R. 140. Extending an invitation to the people of South Korea to join Texas in a relationship of mutual benefit.

H.C.R. 141. Extending an invitation to the people of Japan to join Texas in a relationship of mutual benefit.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RESOLUTION 490

Senator Barrientos offered the following resolution:

WHEREAS, The first annual Texas Crime Stoppers State Conference will be held in Austin April 19-April 21, 1989; and

WHEREAS, The conference is dedicated to the victims of crime, both law enforcement officers and citizens, who have either given their lives or have had their lives adversely affected by crime; and

WHEREAS, Over 400 law enforcement officials, media representatives, and Crime Stoppers volunteers from the 191 Crime Stoppers programs across Texas will gather for the three-day conference which is sponsored jointly by the Texas Crime Stoppers Office in the Governor's Office, the Texas Crime Prevention Institute at Southwest Texas State University, and Austin Crime Stoppers, Incorporated; and

WHEREAS, The conference will include training seminars on Crime Stoppers legal issues, newspaper and radio program development, television re-enactments, and a special address by Greg B. MacAleese, who created the first Crime Stoppers program in 1976; and

WHEREAS, Much of the success of the growth and development of the Crime Stoppers program is due to the efforts of the Honorable Bill Clements who is deeply committed to the criminal justice system and to law enforcement as a whole; and

WHEREAS, Recognizing the enormous potential of this new program, Governor William P. Clements, Jr., created the Texas Crime Stoppers Advisory Council within the Criminal Justice Division of the governor's office during his first term, and he was successful in establishing grant money for the programs across the state; and

WHEREAS, Because of his unfailing support, the number of programs in the state grew from 43 to 89, and Texas emerged as a leader in the Crime Stoppers movement; and

WHEREAS, The success of this innovative program was already apparent by the time Governor Clements returned to office in 1986; today there are 191 successfully operating Crime Stoppers programs in Texas; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, hereby extend heartfelt congratulations to the members of the Texas Crime Stoppers Conference, and the recipients of this year's awards, for their valiant efforts to control the rapid increase in crime in our communities; and, be it further

RESOLVED, That a copy of this Resolution be prepared for them as a token of the deepest respect and admiration from the Texas Senate with best wishes for all future success.

The resolution was read and was adopted viva voce vote.

GUESTS PRESENTED

Senator Barrientos escorted to the President's Rostrum the following award-winning members of Texas Crime Stoppers: Ann Rothkamm, Chairman, Texas Crime Stoppers Advisory Council; George Spalding, Chairman, Austin Crime Stoppers, Inc.; "Marshall Crime Stopper" and Tim Klien, President, Crime Stoppers International, Inc.

The Senate welcomed these guests.

SENATE RESOLUTION 475

Senator Zaffirini offered the following resolution:

S.R. 475, Congratulating the members of the Texas Lutheran College Concert Band and its director, Mr. Lee Boyd Montgomery, Jr., for their meritorious achievements.

The resolution was read and was adopted viva voce vote.

SENATE RESOLUTION 489

Senator Ratliff offered the following resolution:

WHEREAS, Panola County and the City of Carthage are widely known for the warm hospitality and picturesque beauty of their region; and

WHEREAS, As county seat of Panola County, Carthage combines the progressive energy of a flourishing city with the flavor and charm of a small town; the area's fine public school system, clean air, and breathtaking scenery are just a few of the many features that make Panola County an excellent place to work and raise a family; and

WHEREAS, Visitors and residents alike enjoy the area's annual Potlatch, a celebration of community spirit featuring a wide array of arts and crafts exhibits, plenty of good food and music, and the Potlatch Fun Run; other local attractions include the Panola County Cattleman's Association's annual rodeo and the Texas Tea-Room, located in the historic First National Bank Building in Carthage; and

WHEREAS, Citizens of the region are also proud of their association with Tex Ritter and Jim Reeves, both Panola County natives and members of the Country Music Hall of Fame; "Gentleman Jim" now lies at rest near his family home in DeBerry, where visitors may admire the life-size statue and huge terrazo guitar that adorn his gravesite; and

WHEREAS, A favorite spot for sports and outdoor recreation, the Panola County area boasts some of the best fishing in Texas; fishermen from around the country visit nearby Lake Murvaul, where over 100 trophy weight bass are pulled out each year; and

WHEREAS, The area is also home to Panola College, a fully accredited two-year institution offering a variety of academic and vocational options; and

WHEREAS, Nestled amid the lush pine forests and sparkling lakes of East Texas, Panola County and the city of Carthage are blessed with abundant commercial and natural resources; combining lovely surroundings with an energetic and forward-looking population, this remarkable area can truly be said to exemplify the Texas ideal; now, therefore, be it

RESOLVED, That the Senate of the 71st Legislature of the State of Texas hereby recognize April 20, 1989, as Carthage/Panola County Day in Texas and

commend the residents of this area for their efforts in building one of Texas' finest regions.

The resolution was read and was adopted viva voce vote.

GUESTS PRESENTED

Senator Ratliff introduced a delegation of visitors from the City of Carthage and Panola County.

The Senate welcomed these guests.

HOUSE BILL 1497 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1497. Relating to an emergency appropriation to Texas State Technical Institute for repair of facilities damaged by fire. (Submitted by Governor as an emergency matter)

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 1497 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1497** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent: Dickson, Green, Santiesteban, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 0.

Absent: Dickson, Green, Santiesteban, Whitmire.

GUEST PRESENTED

Senator Haley was recognized and presented Dr. Kenneth G. Davis of Conroe.

The Senate welcomed Dr. Davis, a participant in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, and expressed appreciation for his contributions today.

COMMITTEE SUBSTITUTE HOUSE BILL 769 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 769. Relating to filling a vacancy on the board of trustees of an independent school district.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 769 ON THIRD READING**

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 769 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Washington.

Absent: Dickson, Green, Santiesteban.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0.

Absent: Dickson, Green, Santiesteban.

**COMMITTEE SUBSTITUTE
HOUSE BILL 82 ON SECOND READING**

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 82, Relating to exempting from ad valorem taxation personal property not held or used to produce income.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 82 ON THIRD READING**

Senator Parker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 82 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent: Green, Santiesteban.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 468 ON THIRD READING**

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.S.B. 468, Relating to the inheritance rights of illegitimate children.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 843 ON SECOND READING**

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 843, Relating to the offense of barratry and certain contracts for legal services.

The bill was read second time.

Senator Uribe offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.S.B. 843 by amending Subsection (b) of Section 38.12, Penal Code, by adding, after line 3, page 2, a new Subsection (3) reading as follows:

(3) Solicitation does not include speaking to a qualified non-profit organization for the purpose of educating laymen to recognize legal problems, to make intelligent selection of legal counsel, or to utilize available legal services.

and by amending Subsection (f) of Section 38.12, Penal Code, by adding a new Subsection (5) thereof after page 3, line 15, reading as follows:

(5) "Qualified non-profit organization" means a non-profit organization which meets the following conditions:

(a) The primary purposes of the organization do not include the rendition of legal services, or education regarding legal services;

(b) The recommending, furnishing, paying for or education of persons regarding legal services is incidental and reasonably related to the primary purposes of such organization;

(c) Such organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(d) The person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

The amendment was read and was adopted viva voce vote.

Senator Uribe offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.S.B. 843 by amending Subsection (5) of Subsection (d) of Section 38.12, Penal Code, on lines 24 and 25 on page 2 to read as follows:

(5) by or for an attorney not licensed to practice law in this state; or

The amendment was read and was adopted viva voce vote.

On motion of Senator Uribe and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 843 ON THIRD READING**

Senator Uribe moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.S.B. 843 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent: Green, Santiesteban.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1573 ON SECOND READING**

On motion of Senator Caperton and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1573, Relating to the payment, collection, enforcement, and administration of certain taxes, fees, and other amounts collected, received, or owed by the state, including credits and refunds of taxes, fees, and other amounts.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1573 ON THIRD READING**

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1573** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Haley, Harris, Henderson, Johnson, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Krier, Washington.

Absent: Green, Santiesteban.

The bill was read third time.

Senator Caperton offered the following amendment to the bill:

Amend **C.S.S.B. 1573** by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter C, Chapter 111, Tax Code, is amended by adding Section 111.1041 to read as follows:

Sec. 111.1041. APPLICATION OF SUBCHAPTER TO TREASURER. The refund and credit powers given by this subchapter to the comptroller and the limitations on those powers apply in the same manner to the treasurer for the refund and credit of taxes and fees administered and collected by the treasurer.

SECTION 2. Section 111.107, Tax Code, is amended to read as follows:

Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED. A person may request a refund or a credit or the comptroller may make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested:

(1) under Subchapter B of Chapter 112 of this code and the refund is made or the credit is issued under a court order;

(2) under the provision of Section [Article] 111.104(c)(3) applicable to a refund claim filed after a jeopardy or deficiency determination becomes final [of this code]; or

(3) under Chapter 153 of this code.

SECTION 3. Section 112.001, Tax Code, is amended to read as follows:

Sec. 112.001. TAXPAYERS' SUITS: JURISDICTION. The district courts of Travis County have exclusive, original jurisdiction of a taxpayer suit brought under this chapter. This section prevails over a provision of Chapter 25, Government Code, to the extent of any conflict.

SECTION 4. Section 112.051(a), Tax Code, is amended to read as follows:

(a) If a person who is required to pay a ~~[to any department of the state government an occupation, gross receipts, franchise, license, or other privilege]~~ tax or fee imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller, contends that the tax or fee is unlawful or that the public official charged with the duty of collecting the tax or fee ~~[department]~~ may not legally demand or collect the tax or fee, the person shall pay the amount claimed by the state, and if the person intends to bring suit under this subchapter, the person must submit with the payment a protest.

SECTION 5. Section 112.052, Tax Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A suit under this section must be brought before the 91st day ~~[within 90 days]~~ after the date ~~[day]~~ the protest payment was made, or the suit is barred, ~~except that for the tax imposed by Chapter 171 for a regular annual period, if an extension is granted to the taxpayer under Section 171.202(c) for filing the report and the taxpayer files the report on or before the last date of the extension period, the protest required by Section 112.051 may be filed with the report to cover the entire amount of tax paid for the period, and suit for the recovery of the entire amount of tax paid for the period may be filed before the 91st day after the date the report is filed. If the report is not filed on or before the last date of the extension period, a protest filed with the report applies only to the amount of tax, if any, paid when the report is filed]~~; provided that with respect to any tax assessed on an annual basis but which is required to be paid in installments, the protest required by Section 112.051 may be filed with the final annual return and suit for the recovery for any such installment may be filed within 90 days of the time the final annual return is due].

(c) The state may bring a counterclaim in a suit brought under this section if the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this subsection.

SECTION 6. Section 112.057(a), Tax Code, is amended to read as follows:

(a) If ~~the state or the~~ [a] person who brought the suit appeals the judgment of a trial court in a suit authorized by this subchapter, the person who brought the suit shall continue to pay additional taxes under protest as the taxes become due during the appeal.

SECTION 7. Sections 112.058(a), (b), and (c), Tax Code, are amended to read as follows:

(a) Except as provided in Subsections (b) and (c) of this section, payments made under protest are to be handled as follows:

(1) An officer who receives payments made under protest as required by Section 112.051 of this code shall each day send to the treasurer the payments, a list of the persons making the payments, and a written statement that the payments were made under protest.

(2) The comptroller shall issue a deposit receipt to each state department for the daily total of payments received from each department.

(3) The treasurer shall make and keep a suspense cash book in which deposit receipts are entered.

(4) The treasurer shall, immediately on receipt, place the payments in state depositories bearing interest in the same manner that other funds are required to be placed in state depositories at interest.

(5) The treasurer shall allocate the interest earned on these funds and credit the amount allocated to the suspense account until the status of the funds is finally determined.

(6) A payment under protest that is placed in a fund or an account other than a suspense account bears pro rata interest. The pro rata interest is the amount of interest that would be due if the amount had been placed in the suspense account.

(b) A protest payment relating to each tax imposed by Articles 1.14-1, 1.14-2, 4.10, 4.11, 14.42, 21.46, and 23.08, Insurance Code, or by Section 28, Article 8306, Revised Statutes, or by Section 33, Texas Health Maintenance Organization Act (Article 20A-33, Vernon's Texas Insurance Code), shall be handled as follows:

(1) All protest payments made pursuant to requirements for the quarterly prepayment of premium tax or pursuant to the requirements for annual premium tax that become due after August 15, 1985, but before November 15, 1989, shall not be placed in the suspense account, but shall immediately be deposited in the General Revenue Fund.

(2) All protest payments made pursuant to requirements for the quarterly prepayment of premium tax or pursuant to the requirement for annual premium tax that become due on or after November 15, 1989, are governed by Subchapter J, Chapter 403, Government Code ~~[Subsection (a) of this section]~~.

(3) The State Board of Insurance shall keep detailed records of protest payments covered by Subdivision (1) relating to the tax imposed by Articles 1.14-1, 1.14-2, 4.10, 4.11, 14.42, 21.46, and 23.08, Insurance Code, or by Section 28, Article 8306, Revised Statutes, or by Section 33, Texas Health Maintenance Organization Act (Article 20A-33, Vernon's Texas Insurance Code).

(c) Protest payments relating to the tax imposed by Articles 5.12, 5.24, 5.49, 5.68, 5.91, and 9.46 of the Insurance Code shall be handled as follows:

(1) All protest payments that are made pursuant to assessments for the calendar years 1986, 1987, and 1988 shall be immediately deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

(2) All protest payments that are made pursuant to assessments for a calendar year after 1988 are governed by Subchapter J, Chapter 403, Government Code ~~[Subsection (a) of this section]~~.

(3) The State Board of Insurance shall keep detailed records of protest payments covered by Subdivision (1) relating to the tax imposed by Articles 5.12, 5.24, 5.49, 5.68, 5.91, and 9.46, Insurance Code.

SECTION 8. Section 112.060, Tax Code, is amended to read as follows:

Sec. 112.060. CREDIT OR REFUND. (a) If a suit under this subchapter results in a final determination that all or part of the money paid under protest was unlawfully demanded by the public official and belongs to the taxpayer, the treasurer shall credit [refund] the proper amount, with the pro rata interest earned on that amount, against any other amount finally determined to be due to the state from the taxpayer according to information in the custody of the treasurer, and shall refund the remainder by the issuance of a refund warrant.

(b) A refund warrant shall be ~~[styled and designated "tax refund warrant;"]~~ written and signed by the comptroller and ~~[.]~~ countersigned by the treasurer ~~[and issued from a separate series used only for the purpose of making refunds]~~.

(c) Each tax refund warrant shall be drawn against the suspense account. If there are not sufficient funds in the suspense account to pay a refund required to be paid under Subsection (a) of this section, then the comptroller shall draw the warrant [shall be drawn] against the General Revenue Fund or other funds from which refund appropriations may be made, as the comptroller determines appropriate.

(d) The treasurer shall return to the comptroller each tax refund warrant issued, and the comptroller shall deliver it to the person entitled to receive it.

SECTION 9. Section 112.101, Tax Code, is amended to read as follows:

Sec. 112.101. REQUIREMENTS BEFORE INJUNCTION. (a) An action for a [No] restraining order or injunction that prohibits the assessment or collection of a [state] tax[, license, registration,] or [filing] fee imposed by this title or collected by the comptroller under any law, including a local tax collected by the comptroller, or a statutory penalty assessed for the failure to pay the [state] tax or fee may not be brought [granted in this state or may be granted] against the public [a state] official charged with the duty of collecting the tax or fee or a representative of the public [an] official [in this state] unless the applicant for the order or injunction has first:

(1) filed with the attorney general not later than the fifth day before the date the action is filed a statement of the grounds on which the order or injunction is sought; and

(2) either:

(A) paid to the public official who collects the tax or fee [into the suspense account of the treasurer] all taxes, fees, and penalties then due by the applicant to the state; or

(B) [(2)] filed with the public official who collects the tax or fee [treasurer] a good and sufficient bond to guarantee the payment of the taxes, fees, and penalties in an amount equal to twice the amount of the taxes, fees, and penalties then due and that may reasonably be expected to become due during the period the order or injunction is in effect.

(b) The amount and terms of the bond and the sureties on the bond authorized by Subsection (a)(2)(B) [of this section] must be approved by and acceptable to the judge of the court granting the order or injunction and the attorney general.

(c) The application for the restraining order or injunction must state under the oath of the applicant or the agent or attorney of the applicant that:

(1) the statement required by Subsection (a)(1) has been filed as provided by that subsection; and

(2) the payment of taxes, fees, and penalties has been made as provided by Subsection (a)(2)(A) [(a)(1) of this section,] or [(2)] a bond has been approved and filed as provided by Subsection (a)(2)(B) and Subsection (b) [of this section].

(d) The public official shall deliver a payment or bond required by Subsection (a)(2) to the treasurer. The treasurer shall deposit a payment made under Subsection (a)(2)(A) into the suspense account of the treasurer.

SECTION 10. Subchapter C, Chapter 112, Tax Code, is amended by adding Section 112.1011 to read as follows:

Sec. 112.1011. NATURE OF ACTION FOR INJUNCTION. (a) A court may not issue a restraining order or consider the issuance of an injunction that prohibits the collection of an amount described by Section 112.101(a) unless the applicant for the order or injunction demonstrates that:

(1) irreparable injury will result to the applicant if the order or injunction is not granted;

(2) no other adequate remedy is available to the applicant; and

(3) the applicant has a reasonable possibility of prevailing on the merits of the claim.

(b) If the court issues a temporary or permanent injunction, the court shall determine whether the amount the collection of which the applicant seeks to prohibit is due and owing to the state by the applicant.

SECTION 11. Subchapter C, Chapter 112, Tax Code, is amended by adding Section 112.1012 to read as follows:

Sec. 112.1012. COUNTERCLAIM. The state may bring a counterclaim in a suit for a permanent injunction brought under this subchapter if the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the application for a permanent injunction. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this section.

SECTION 12. Section 112.102, Tax Code, is amended to read as follows:

Sec. 112.102. RECORDS AFTER INJUNCTION. (a) After the granting of a restraining order or injunction under this subchapter, the applicant shall make and keep records ~~[a well-bound record book]~~ of all taxes accruing during the period that the order or injunction is effective.

(b) The records are ~~[record book is]~~ open for inspection by the attorney general and the public ~~[state]~~ officer authorized to enforce the collection of the tax to which the order or injunction applies during the period that the order or injunction is effective and for one year after the date that the order or injunction expires.

(c) The records ~~[record book]~~ must be adequate to determine the amount of all affected taxes or fees accruing during the period that the order or injunction is effective ~~[include a record of each purchase, receipt, sale, or other disposition of a commodity, product, material, or article on which the tax is levied or by which the tax is measured].~~

SECTION 13. Sections 112.103(a) and (b), Tax Code, are amended to read as follows:

(a) On the first ~~[each]~~ Monday of each month during the period that an order or injunction granted under this subchapter is effective, the applicant shall make and file a report with the state officer authorized to enforce the collection of the tax to which the order or injunction applies.

(b) The report must include the following monthly ~~[weekly]~~ information:

(1) the amount of the tax accruing;

(2) a description of the total purchases, receipts, sales, and ~~[other]~~ dispositions of all commodities, products, materials, ~~[and]~~ articles, items, services, and transactions on which the tax is levied or by which the tax is measured;

(3) the name and address of each person to whom a commodity, product, material, or article is sold or distributed or for whom a service is performed; and

(4) if payment of the tax is evidenced or measured by the sale or use of stamps or tickets, a complete record of all stamps or tickets used, sold, or handled.

SECTION 14. Section 112.104(a), Tax Code, is amended to read as follows:

(a) If an applicant for an order or injunction granted under this subchapter has not filed a bond as required by Section 112.101(a)(2)(B) of this code, the applicant shall ~~[on each Monday]~~ pay into the suspense account of the treasurer all taxes, fees, and penalties to which the order or injunction applies as those taxes, fees, and penalties accrue and before they become delinquent.

SECTION 15. Section 112.107, Tax Code, is amended to read as follows:

Sec. 112.107. CREDIT OR REFUND. If the final judgment in a suit under this subchapter maintains the right of the applicant for a permanent injunction to prevent the collection of the tax, the treasurer shall credit ~~[refund to the applicant]~~ the money deposited in the suspense account under this subchapter, with the pro rata interest earned on the money against any other amount finally determined to be due to the state from the applicant according to information in the custody of the treasurer, and shall refund the remainder to the applicant.

SECTION 16. Subchapter C, Chapter 112, Tax Code, is amended by adding Section 112.108 to read as follows:

Sec. 112.108. OTHER ACTIONS PROHIBITED. Except for a restraining order or injunction issued as provided by this subchapter, a court may not issue a restraining order, injunction, declaratory judgment, writ of mandamus or prohibition, order requiring the payment of taxes or fees into the registry or custody of the court, or other similar legal or equitable relief against the state or a state agency relating to the applicability, assessment, collection, or constitutionality of a tax or fee covered by this subchapter or the amount of the tax or fee due.

SECTION 17. Section 112.151, Tax Code, is amended to read as follows:

Sec. 112.151. SUIT FOR REFUND. (a) A person may sue the comptroller to recover an amount of tax, penalty, or interest that has been the subject of a tax refund claim if the person has:

- (1) filed a tax refund claim under Section 111.104 of this code;
- (2) filed, as provided by Section 111.105 of this code, a motion for rehearing that has been denied by the comptroller; and
- (3) paid any additional tax found due in a jeopardy or deficiency determination that applies to the tax liability period covered in the tax refund claim.

(b) The suit must be brought against both the comptroller and the attorney general, and must be filed in a district court.

(c) The suit must be filed before the expiration of 30 days after the issue date of the denial of the motion for rehearing or it is barred.

(d) The amount of the refund sought must be set out in the original petition. A copy of the motion for rehearing filed under Section 111.105 of this code must be attached to the original petition filed with the court and to the copies [copy] of the original petition served on the comptroller and the attorney general.

(e) A person may not intervene in the suit.

(f) A person may sue the treasurer to recover an amount of a tax, penalty, or interest that has been the subject of a refund claim filed with the treasurer as authorized by Section 111.1041. All the provisions of this subchapter applicable to a suit brought against the comptroller under this section apply in the same manner to a suit brought against the treasurer under this section.

SECTION 18. Subchapter D, Chapter 112, Tax Code, is amended by adding Section 112.1512 to read as follows:

Sec. 112.1512. COUNTERCLAIM. The state may bring a counterclaim in a suit brought under this subchapter if the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this section.

SECTION 19. Section 112.155(c), Tax Code, is amended to read as follows:

(c) The plaintiff is entitled to interest [at the rate of 10 percent a year] on the amount of tax included in a judgment for the plaintiff equal to the amount of interest that would be due if the tax had been deposited in the suspense account of the treasurer. The interest accrues beginning from the date that the tax was paid until:

- (1) the date that the amount is credited against the plaintiff's tax liability; or
- (2) a date determined by the comptroller that is not sooner than 10 days before the actual date on which a refund warrant is issued.

SECTION 20. Section 403.074, Government Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Unless another law provides a period within which a particular claim must be made, a claim may not be made under this section after four years from the date on which the claim arose. A person who fails to make a claim within the period provided by law waives any right to a payment of the claim.

(f) This section does not apply to a claim for a refund of a tax or fee.

SECTION 21. Section 403.076, Government Code, is amended to read as follows:

Sec. 403.076. TAX REFUNDS. (a) The comptroller shall pay from available funds claims for refunds of state taxes for which a refund may not be claimed under Section 111.104, Tax Code collected under:

[(1) the Alcoholic Beverage Code;

[(2) Sections 11 and 12, Article 1.14-1; Section 12, Article 1.14-2; and Articles 4.10 and 4.11, Insurance Code; and

[(3) Section 1, Chapter 619, Acts of the 51st Legislature, Regular Session, 1949 (Article 4769, Vernon's Texas Civil Statutes)].

(b) The comptroller shall keep records of each transaction made under this section, showing:

(1) the amount of the claim paid;

(2) the identity of the claimant;

(3) the purpose of the claim; and

(4) the fund or account against which the claim is to be charged.

(c) For a tax for which no other law provides a period within which a refund claim must be made, a refund claim may not be made after four years from the latest date on which the tax could be paid without the imposition of a penalty or interest. If the law does not provide for the imposition of a penalty or interest for a tax not paid within a specified period, a claim for a refund of the tax may not be made after four years from the date the return relating to the tax was due or, if applicable, a notice that the tax was due.

(d) A person who fails to make a tax refund claim within the period provided by this section or other law waives any right to a refund of the tax paid.

(e) The refund claim must be filed in writing with the agency that collects the tax for which the refund is claimed. The claim must state the amount of the refund claimed and be accompanied by evidence sufficient to establish the grounds for and the amount of the refund.

(f) If the refund is required by law to be made by an agency other than the agency that collects the tax for which the refund is claimed, the agency that collects the tax shall provide the agency making the refund with a copy of the refund claim and the accompanying evidence to establish the validity and amount of the refund. The agency responsible for making the refund may not make a refund without receiving that evidence.

(g) Before paying a refund under this section, the comptroller shall credit the amount due to the person claiming the refund against any other amount finally determined to be due to the state from the person according to information in the custody of the comptroller, and shall refund the remainder.

(h) This section does not apply to taxes paid under protest.

(i) This section is not a waiver of sovereign immunity for a refund suit. A person claiming a refund may not seek or obtain judicial review of a determination by the agency with which a refund claim is filed or by the agency having the responsibility to make a refund relating to the refund claim unless the legislature by resolution grants permission for a person to seek judicial review of the determination.

SECTION 22. Section 403.077, Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) Unless another law provides a period within which a particular refund claim must be made, a refund claim may not be made under this section after four years from the latest date on which the amount collected or received by the state was due, if the amount was required to be paid on or before a particular date. If the amount was not required to be paid on or before a particular date, a refund claim may not be made after four years from the date the amount was collected or received. A person who fails to make a refund claim within the period provided by law waives any right to a refund of the amount paid.

(e) This section does not apply to a refund of a tax.

SECTION 23. Section 403.078, Government Code, is amended to read as follows:

Sec. 403.078. FORM. All claims and accounts against the state shall be submitted on forms or according to the method and format that the comptroller prescribes. The claims and accounts shall be prepared to provide for entering on the claim or account, for use of the comptroller's office, the following:

- (1) authorization of the head of the office or other person responsible for the expenditure;
- (2) the appropriation against which the disbursement is to be charged;
- (3) information required by the comptroller's rules; [and]
- (4) proof that the claim or account was presented to the state within the period of limitation provided by Section 16.051, Civil Practice and Remedies Code, or other applicable statute; and
- (5) other appropriate matters.

SECTION 24. Chapter 403, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. SUITS BY PERSONS OWING TAXES OR FEES

Sec. 403.201. SUITS: JURISDICTION. The district courts of Travis County have exclusive, original jurisdiction of a suit brought under this chapter. This section prevails over Chapter 25 to the extent of any conflict.

Sec. 403.202. PROTEST PAYMENT REQUIRED. (a) If a person who is required to pay to any department of the state government an occupation, gross receipts, franchise, license, or privilege tax or fee, other than a tax or fee to which Subchapter B, Chapter 112, Tax Code, applies, contends that the tax or fee is unlawful or that the department may not legally demand or collect the tax or fee, the person shall pay the amount claimed by the state, and if the person intends to bring suit under this subchapter, the person must submit with the payment a protest.

(b) The protest must be in writing and must state fully and in detail each reason for recovering the payment.

(c) The protest payment must be made within the period set out in Section 403.076 or 403.077 for the filing of a refund claim.

Sec. 403.203. PROTEST PAYMENT SUIT AFTER PAYMENT UNDER PROTEST. (a) A person may bring suit against the state to recover an occupation, gross receipts, franchise, license, or privilege tax or fee covered by this subchapter and required to be paid to the state if the person has first paid the tax under protest as required by Section 403.202.

(b) A suit under this section must be brought before the 91st day after the day the protest payment was made, or the suit is barred; provided that with respect to any tax or fee assessed annually but that is required to be paid in installments, the protest required by Section 403.202 may be filed with the final annual return and suit for the recovery for any such installment may be filed within 90 days after the final annual return is due.

(c) The state may bring a counterclaim in a suit brought under this section if the counterclaim relates to taxes or fees imposed under the same statute and

during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the suit. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this subsection.

Sec. 403.204. PROTEST PAYMENT SUIT: PARTIES; ISSUES. (a) A suit authorized by this subchapter must be brought against the public official charged with the duty of collecting the tax or fee, the treasurer, and the attorney general.

(b) The issues to be determined in the suit are limited to those arising from the reasons expressed in the written protest as originally filed.

(c) A copy of the written protest as originally filed must be attached to the original petition filed by the person paying the tax or fee with the court and to the copies of the original petition served on the treasurer, the attorney general, and the public official charged with the duty of collecting the tax or fee.

Sec. 403.205. TRIAL DE NOVO. The trial of the issues in a suit under this subchapter is de novo.

Sec. 403.206. CLASS ACTIONS. (a) In this section, a class action includes a suit brought under this subchapter by at least two persons who have paid taxes or fees under protest as required by Section 403.202.

(b) In a class action, all taxpayers who are within the same class as the persons bringing the suit, who are represented in the class action, and who have paid taxes or fees under protest as required by Section 403.202, are not required to file separate suits, but are entitled to and are governed by the decision rendered in the class action.

Sec. 403.207. ADDITIONAL PROTEST PAYMENTS BEFORE HEARING. (a) A petitioner shall pay additional taxes or fees when due under protest after the filing of a suit authorized by this subchapter and before the trial. The petitioner may amend the original petition to include all additional taxes or fees paid under protest before five days before the day the suit is set for a hearing or may elect to file a separate suit. The election does not prevent the court from exercising its power to consolidate or sever suits and claims under the Texas Rules of Civil Procedure.

(b) This section applies to additional taxes or fees paid under protest only if a written protest is filed with the additional taxes or fees and the protest states the same reason for contending the payment of taxes or fees that was stated in the original protest.

Sec. 403.208. PROTEST PAYMENTS DURING APPEAL. (a) If the state or the person who brought the suit appeals the judgment of a trial court in a suit authorized by this subchapter, the person who brought the suit shall continue to pay additional taxes or fees under protest as the taxes or fees become due during the appeal.

(b) Additional taxes or fees that are paid under protest during the appeal of the suit are governed by the outcome of the suit without the necessity of the person filing an additional suit for the additional taxes or fees.

Sec. 403.209. SUBMISSION OF PROTEST PAYMENTS TO TREASURER. (a) An officer who receives payments of taxes or fees made under protest as required by Section 403.202 shall each day send to the treasurer the payments, a list of the persons making the payments, and a written statement that the payments were made under protest.

(b) The treasurer shall deposit each payment made under protest in the general revenue fund or to the fund or funds to which the tax or fee is allocated by law.

(c) The treasurer or the officer who receives a payment made under protest, if designated by the treasurer, shall maintain detailed records of the payment made under protest.

(d) For purposes of a tax or fee paid under protest under this subchapter, the interest to be credited on the tax or fee is an amount equal to the amount of interest that would have been earned by the tax or fee if the tax or fee had been deposited into the suspense account of the treasurer.

Sec. 403.210. DISPOSITION OF PROTEST PAYMENTS BELONGING TO STATE. If a suit authorized by this subchapter is not brought in the manner or within the time required or if the suit is properly filed and results in a final determination that a tax or fee payment or a portion of a tax or fee payment made under protest, including the amount of interest credited on the payment, belongs to the state, the state retains the proper amount of the tax or fee payment and the proportionate share of the interest earned.

Sec. 403.211. CREDIT OR REFUND. (a) If a suit under this subchapter results in a final determination that all or part of the money paid under protest was unlawfully demanded by the public official and belongs to the payer, the treasurer, as soon as practicable on or after September 1 of the first year of the first state biennium that begins after the date of the final determination of the suit, shall credit the proper amount, with the interest credited on that amount, against any other amount finally determined to be due to the state from the payer according to information in the custody of the treasurer, and shall refund the remainder to the payer by the issuance of a refund warrant.

(b) A refund warrant shall be written and signed by the comptroller and countersigned by the treasurer.

(c) The comptroller shall draw a refund warrant against the general revenue fund or other funds from which refund appropriations may be made, as the comptroller determines appropriate.

(d) The treasurer shall return to the comptroller each refund warrant issued, and the comptroller shall deliver it to the person entitled to receive it.

Sec. 403.212. REQUIREMENTS BEFORE INJUNCTION. (a) An action for a restraining order or injunction that prohibits the assessment or collection of a state tax; license, registration, or filing fee; or statutory penalty assessed for the failure to pay the state tax or fee may not be brought against a state official or a representative of an official in this state unless the applicant for the order or injunction has first:

(1) filed with the attorney general not later than the fifth day before the date the action is filed a statement of the grounds on which the order or injunction is sought; and

(2) either:

(A) paid to the state official who collects the tax or fee all taxes, fees, and penalties then due by the applicant to the state; or

(B) filed with the state official who collects the tax or fee a good and sufficient bond to guarantee the payment of the taxes, fees, and penalties in an amount equal to twice the amount of the taxes, fees, and penalties then due and that may reasonably be expected to become due during the period the order or injunction is in effect.

(b) The amount and terms of the bond and the sureties on the bond authorized by Subsection (a)(2)(B) must be approved by and acceptable to the judge of the court granting the order or injunction and the attorney general.

(c) The application for the restraining order or injunction must state under the oath of the applicant or the agent or attorney of the applicant that:

(1) the statement required by Subsection (a)(1) has been filed as provided by that subsection; and

(2) the payment of taxes, fees, and penalties has been made as provided by Subsection (a)(2)(A) or a bond has been approved and filed as provided by Subsection (a)(2)(B) and Subsection (b).

(d) A state official that receives a payment or bond under Subsection (a)(2) shall deliver the payment or bond to the treasurer. The treasurer shall deposit a payment made under Subsection (a)(2)(A) into the suspense account of the treasurer.

(c) This section does not apply to a tax or fee to which Subchapter C, Chapter 112, Tax Code, applies.

Sec. 403.213. NATURE OF ACTION FOR INJUNCTION. (a) A court may not issue a restraining order or consider the issuance of an injunction that prohibits the collection of a tax, fee, or other amount covered by Section 403.212 unless the applicant for the order or injunction demonstrates that:

(1) irreparable injury will result to the applicant if the order or injunction is not granted;

(2) no other adequate remedy is available to the applicant; and

(3) the applicant has a reasonable possibility of prevailing on the merits of the claim.

(b) If the court issues a temporary or permanent injunction, the court shall determine whether the amount the collection of which the applicant seeks to prohibit is due and owing to the state by the applicant.

Sec. 403.214. COUNTERCLAIM. The state may bring a counterclaim in a suit for a permanent injunction brought under this subchapter if the counterclaim relates to taxes or fees imposed under the same statute and during the same period as the taxes or fees that are the subject of the suit and if the counterclaim is filed not later than the 30th day before the date set for trial on the merits of the application for a permanent injunction. The state is not required to make an assessment of the taxes or fees subject to the counterclaim under any other statute, and the period of limitation applicable to an assessment of the taxes or fees does not apply to a counterclaim brought under this section.

Sec. 403.215. RECORDS AFTER INJUNCTION. (a) After the granting of a restraining order or injunction under this subchapter, the applicant shall make and keep records of all taxes and fees accruing during the period that the order or injunction is effective.

(b) The records are open for inspection by the attorney general and the state officer authorized to enforce the collection of the tax or fee to which the order or injunction applies during the period that the order or injunction is effective and for one year after the date that the order or injunction expires.

(c) The records must be adequate to determine the amount of all affected taxes or fees accruing during the period that the order or injunction is effective.

Sec. 403.216. REPORTS AFTER INJUNCTION. (a) On the first Monday of each month during the period that an order or injunction granted under this subchapter is effective, the applicant shall make and file a report with the state officer authorized to enforce the collection of the tax or fee to which the order or injunction applies.

(b) The report must include the following monthly information:

(1) the amount of the tax accruing;

(2) a description of the total purchases, receipts, sales, and dispositions of all commodities, products, materials, articles, items, services, and transactions on which the tax is levied or by which the tax or fee is measured;

(3) the name and address of each person to whom a commodity, product, material, or article is sold or distributed or for whom a service is performed;

(4) if the tax is imposed on or measured by the number or status of employees of the applicant, a complete record of the employees of the applicant and any related information that affects the amount of the tax; and

(5) if payment of the tax or fee is evidenced or measured by the sale or use of stamps or tickets, a complete record of all stamps or tickets used, sold, or handled.

(c) The report shall be made on a form prescribed by the state official with whom the report is required to be filed.

Sec. 403.217. ADDITIONAL PAYMENTS OR BOND. (a) If an applicant for an order or injunction granted under this subchapter has not filed a bond as required by Section 403.212(a)(2)(B), the applicant shall pay all taxes, fees, and penalties to which the order or injunction applies as those taxes, fees, and penalties accrue and before they become delinquent.

(b) If the attorney general determines that the amount of a bond filed under this subchapter is insufficient to cover double the amount of taxes, fees, and penalties accruing after the restraining order or injunction is granted, the attorney general shall demand that the applicant file an additional bond.

Sec. 403.218. DISMISSAL OF INJUNCTION. (a) The attorney general or the state official authorized to enforce the collection of a tax or fee to which an order or injunction under this subchapter applies may file in the court that has granted the order or injunction an affidavit stating that the applicant has failed to comply with or has violated a provision of this subchapter.

(b) On the filing of an affidavit authorized by Subsection (a), the clerk of the court shall give notice to the applicant to appear before the court to show cause why the order or injunction should not be dismissed. The notice shall be served by the sheriff of the county where the applicant resides or by any other peace officer in the state.

(c) The date of the show-cause hearing, which shall be within five days of service of the notice or as soon as the court can hear it, shall be named in the notice.

(d) If the court finds that the applicant failed, at any time before the suit is finally disposed of by the court of last resort, to make and keep a record, file a report, file an additional bond on the demand of the attorney general, or pay additional taxes, fees, and penalties as required by this subchapter, the court shall dismiss the application and dissolve the order or injunction.

Sec. 403.219. FINAL DISMISSAL OR DISSOLUTION OF INJUNCTION. (a) If a restraining order or injunction is finally dismissed or dissolved and a bond was filed, the treasurer shall make demand on the applicant and the applicant's sureties for the immediate payment of all taxes, fees, and penalties due the state.

(b) Taxes, fees, and penalties that are secured by a bond and remain unpaid after a demand for payment shall be recovered in a suit by the attorney general against the applicant and the applicant's sureties in a court of competent jurisdiction of Travis County or in any other court having jurisdiction of the suit.

Sec. 403.220. CREDIT OR REFUND. (a) If the final judgment in a suit under this subchapter maintains the right of the applicant for a permanent injunction to prevent the collection of the tax or fee, the treasurer shall credit the amount of the tax or fee, with the interest on that amount, against any other amount finally determined to be due to the state from the applicant according to information in the custody of the treasurer, and shall refund the remainder to the applicant. The credit or refund shall be made as soon as practicable on or after September 1 of the first year of the first state biennium that begins after the date of the final judgment.

(b) For purposes of this section, the interest to be paid on a refund of a tax or fee is an amount equal to the amount of interest that would have been earned by the tax or fee if the tax or fee had been paid into the suspense account of the treasurer.

Sec. 403.221. OTHER ACTIONS PROHIBITED. Except for a restraining order or injunction issued as provided by Section 403.212, a court may not issue a restraining order, injunction, declaratory judgment, writ of mandamus or

prohibition, order requiring the payment of taxes or fees into the registry or custody of the court, or other similar legal or equitable relief against the state or a state agency relating to the applicability, assessment, collection, or constitutionality of a tax or fee covered by Section 403.212 or to the amount of the tax or fee due.

SECTION 25. (a) Sections 112.056(b) and 112.151(b), Tax Code, are repealed.

(b) The following sections of the Insurance Code are repealed:

- (1) Section 17, Article 4.10;
- (2) Section 18, Article 4.10;
- (3) Section 12, Article 4.11;
- (4) Section 9, Article 4.11A;
- (5) Section 11, Article 9.59; and
- (6) Section 12, Article 9.59.

SECTION 26. A claim or legal action for a refund of a tax, fee, or other amount that was paid before the effective date of this Act and that would otherwise be barred by a period of limitation added by this Act may be made as provided by the law in effect immediately before the effective date of this Act if made before March 1, 1990. This section does not authorize a claim or legal action for a refund that would not have been authorized under the law in effect immediately before the effective date of this Act.

SECTION 27. (a) The changes in law made by this Act apply to any claim or action filed before the effective date of this Act to the extent those changes may be made applicable. However, an amount in the suspense account of the treasurer when this Act takes effect shall be retained in the suspense account pending the final determination of the claim or suit relating to that amount. This Act does not affect an amount paid under protest and placed in a fund or account other than the suspense account of the treasurer before the effective date of this Act under Section 112.058, Tax Code, or other law.

(b) Section 403.211, Government Code, as added by this Act, applies to a refund of a tax or fee governed by that section that was paid under protest before the effective date of this Act, even if the tax or fee was paid under protest under Subchapter B, Chapter 112, Tax Code.

(c) Section 403.220, Government Code, as added by this Act, applies to a refund of a tax or fee governed by that section, even if the action for the injunction was brought under Subchapter C, Chapter 112, Tax Code, before the effective date of this Act.

SECTION 28. This Act takes effect September 1, 1989.

SECTION 29. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

By unanimous consent, the amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed viva voce vote.

SENATE BILL 945 ON SECOND READING

On motion of Senator Dickson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 945, Relating to persons who may request an attorney general's opinion.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 945 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **S.B. 945** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Green.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent: Green.

**COMMITTEE SUBSTITUTE
SENATE BILL 1564 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1564, Relating to the administration and management of certain courts; the powers, assignment, and retirement of certain judges; and candidates for certain judicial offices.

The bill was read second time.

Senator Glasgow offered the following amendment to the bill:

Amend SECTION 17, **C.S.S.B. 1564** by changing Sec. 75.003(1) to read as follows:

“(1) to sit on an appellate, district or statutory county court; and”

The amendment was read and was adopted viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1564 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1564** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Green.

The bill was read third time and was passed viva voce vote.

SENATE BILL 822 ON SECOND READING

On motion of Senator Parmer and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 822, Relating to the creation and administration of programs to distribute farmers market food coupons to certain individuals.

The bill was read second time and was passed to engrossment viva voce vote.

SENATE BILL 822 ON THIRD READING

Senator Parmer moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **S.B. 822** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Green.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent: Green.

**COMMITTEE SUBSTITUTE
SENATE BILL 801 ON SECOND READING**

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 801, Relating to the creation of a lien for services performed by an architect, engineer, or surveyor.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 801 ON THIRD READING**

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 801** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Green.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1351 ON SECOND READING**

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1351, Relating to the creation of the Outstanding Rural Scholar Recognition Program and the establishment of the Outstanding Rural Scholar fund

in the state treasury to address the shortage of health care professionals in rural Texas.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1351 ON THIRD READING**

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.S.B. 1351** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent: Green.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent: Green.

**COMMITTEE SUBSTITUTE
SENATE BILL 1507 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1507, Relating to the promotion and regulation of the fish farming industry; providing penalties.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Amend **C.S.S.B. 1507** as follows:

(1) In Section 3 of the bill strike Section 134.019, Agriculture Code, as transferred and designated by that section of the bill, and substitute the following:

Sec. 134.019 [48.010]. MARKETING OF REDFISH, [AND] SPECKLED SEA TROUT, AND HYBRID STRIPED BASS. (a) The commissioner [commission] shall adopt rules providing for the raising, sale, transportation, and possession of cultured redfish, [and] cultured speckled sea trout, and cultured hybrid striped bass raised by a fish farmer licensed under this chapter.

(b) The rules shall provide for and require the identification of cultured redfish, cultured [and] speckled sea trout, and cultured hybrid striped bass raised by a fish farmer under this chapter.

(2) Immediately before the section of the bill containing the effective date, insert a new section of the bill, appropriately numbered, to read as follows:

SECTION ____. Section 66.111(a), Parks and Wildlife Code, is amended to read as follows:

(a) No person may buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, or barter or exchange freshwater crappie, bass of the genus *Micropterus*, striped bass other than cultured hybrid [and hybrids of] striped bass, white bass, walleye, sauger, northern pike, muskellunge, trout of the family Salmonidae, or flathead catfish.

(3) Renumber sections of the bill accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1507 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.S.B. 1507 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

(Senator Glasgow in Chair)

SENATE BILL 563 ON SECOND READING

Senator Haley asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

S.B. 563, Relating to a decision of the commissioner of education relating to a student's eligibility to participate in extracurricular activities.

There was objection.

Senator Haley then moved to suspend the regular order of business and take up **S.B. 563** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Armbrister, Barrientos, Bivins, Brown, Caperton, Dickson, Glasgow, Green, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Truan, Uribe, Whitmire.

Nays: Brooks, Carriker, Edwards, Johnson, Lyon, Tejeda, Washington, Zaffirini.

The bill was read second time.

Senator Haley offered the following committee amendment to the bill:

Amend **S.B. 563** on page 1, line 18, to read:

"final and not subject to judicial review unless it is arbitrary, capricious, or not supported by substantial evidence"

The committee amendment was read.

Senator Johnson offered the following substitute amendment for the committee amendment:

Amend **S.B. 563** by substituting the following for the committee amendment:

Strike Section 1 and substitute the following:

SECTION 1. Section 21.920, Education Code, is amended by adding Subsection (e) to read as follows:

(e) An appeal to the commissioner of education that presents issues related to a student's eligibility to participate in extracurricular activities, including issues

related to the student's grades or the school district's grading policy, is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). As provided under that Act, the parties to the appeal are entitled to an opportunity for a hearing, notice of the hearing, and an opportunity to present evidence as provided by that Act and the final decision of the commissioner shall include written findings of fact and conclusions of law. The commissioner may delegate the matter for decision to a person or entity the commissioner designates, who shall exercise the duties of the commissioner under the Administrative Procedure and Texas Register Act. The decision of the commissioner or the commissioner's designee in a matter governed by this subsection is final unless it is arbitrary, capricious, or not supported by substantial evidence.

(President in Chair)

The substitute amendment for the committee amendment was read and was adopted by the following vote: Yeas 16, Nays 13.

Yeas: Barrientos, Brooks, Carriker, Dickson, Edwards, Johnson, Lyon, Parker, Parmer, Santiesteban, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Bivins, Brown, Caperton, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims.

Absent: Glasgow, Green.

On motion of Senator Haley and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider the Executive appointments to agencies, boards and commissions. Notice of submission of these names for consideration was given yesterday by Senator Edwards.

The President asked if there were requests to sever nominees.

Senator Brown requested that the nomination of Mrs. Marta Greytok, to be a Member of the Public Utility Commission of Texas, be severed.

Senator Henderson requested that the nomination of William B. Cassin, to be a Member of the Public Utility Commission of Texas, be severed.

The requests were granted.

NOMINEES CONFIRMED

The following nominees, not severed and reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Adjutant General of Texas: MAJOR GENERAL JAMES T. DENNIS, Tarrant County.

Adjutant General of Texas: BRIGADIER GENERAL WILLIAM C. WILSON, Hunt County.

Members, Board of Regents, Stephen F. Austin State University: SENATOR ROY BLAKE, SR., Nacogdoches County; HOMER LEE BRYCE, Rusk County; JAMES M. WINDHAM, JR., Harris County; LARRY JAY CHRISTOPHER, Houston County.

Member, Texas National Research Laboratory Commission: WARREN G. WOODWARD, Dallas County.

Member, Texas Public Building Authority: HARRY M. WHITTINGTON, Travis County.

Member, Texas Public Finance Authority: HARRY M. WHITTINGTON, Travis County; DAVID HERNDON, Travis County.

Members, Texas Board of Licensure for Nursing Home Administrators: MS. BARBARA JoANN WAGGENER HINSON, Upshur County; MRS. MARGARET GOSE, Wichita County; HERMAN D. SABRSULA, Harris County.

Member, Board of Directors, Angelina and Neches River Authority: WENDEL CARL MESSEC, Rusk County.

Members, Board of Directors, Brazos River Authority: ROBERT ELLINGTON HEBERT, Fort Bend County; JESSE LEE HIBBETTS, JR., Brazoria County; ART KING, Brazos County; MS. RUTH SCHIERMEYER, Lubbock County.

Members, Board of Directors, Upper Neches River Authority: GORDON B. BROYLES, Anderson County; BEN L. SWINNEY, Anderson County.

Member, Board of Directors, Upper Colorado River Authority: GEORGE RAY ALDERMAN, Runnels County.

Members, Board of Directors, Nueces River Authority: DAN O. DENNIS, Nueces County; GEORGE A. FINLEY III, Nueces County; JOSEPH E. GARDNER, JR., Nueces County.

Branch Pilots for Galveston Bar and Houston Ship Channel: CAPTAIN ERNEST D. REED, Liberty County; CAPTAIN LANCE A. MILLER, Harris County; CAPTAIN ALLAN R. BARRY, Harris County.

PUBLIC UTILITY COMMISSION NOMINEES CONFIRMED

Question on the confirmation of Mrs. Marta Greytok to be a Member of the Public Utility Commission of Texas, Mrs. Greytok was confirmed by the following vote: Yeas 25, Nays 6.

Yeas: Armbrister, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Ratliff, Santiesteban, Sims, Tejeda, Washington, Whitmire, Zaffirini.

Nays: Barrientos, Edwards, Glasgow, Parmer, Truan, Uribe.

Question on the confirmation of William B. Cassin to be a Member of the Public Utility Commission of Texas, Mr. Cassin was confirmed by the following vote: Yeas 24, Nays 7.

Yeas: Armbrister, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Ratliff, Santiesteban, Sims, Tejeda, Washington, Whitmire, Zaffirini.

Nays: Barrientos, Edwards, Glasgow, Green, Parmer, Truan, Uribe.

MEMORIAL RESOLUTIONS

S.R. 477 - By Glasgow: In memory of Doyle Graves of Bluff Dale.

S.R. 478 - By Glasgow: In memory of Howard B. Ingram of Eastland County.

S.R. 479 - By Glasgow: In memory of William R. Black of Breckenridge.

S.R. 480 - By Glasgow: In memory of George Roy Park of Alvarado.

S.R. 481 - By Glasgow: In memory of Wayne K. Adams of Gustine.

S.R. 482 - By Glasgow: In memory of Ray Finney of Fort Worth.

S.R. 483 - By Glasgow: In memory of Vernon D. Parrott of Weatherford.

S.R. 485 - By Glasgow: In memory of Daniel David Rosenthal of Aledo.

S.R. 486 - By Glasgow: In memory of P. L. White, Jr., of Cleburne.

S.R. 487 - By Glasgow: In memory of Willie Joe Brannon of White Settlement.

CONGRATULATORY RESOLUTIONS

S.R. 476 - By Glasgow: Extending congratulations to Sambo Khvan on achieving the rank of Eagle Scout.

S.R. 488 - By Dickson: Extending congratulations to the Railroad and Pioneer Museum for its contribution to the preservation of Texas' past.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 1:07 p.m. adjourned until 9:30 a.m. tomorrow.

APPENDIX

Signed by Governor

(April 17, 1989)

H.B. 1279 (Effective August 31, 1989)

(April 18, 1989)

S.B. 41 (Effective September 1, 1989)

(April 19, 1989)

H.B. 387 (Effective immediately)

H.B. 393 (Effective immediately)

S.B. 51 (Effective September 1, 1989)

S.B. 139 (Effective September 1, 1989)

S.B. 236 (Effective August 28, 1989)

S.B. 289 (Effective immediately)

S.B. 331 (Effective immediately)

S.B. 436 (Effective immediately)

S.B. 491 (Effective immediately)

S.B. 505 (Effective September 1, 1989)

S.B. 577 (Effective August 28, 1989)

S.B. 590 (Effective August 28, 1989)

S.B. 609 (Effective September 1, 1989)

H.C.R. 114

H.C.R. 145

S.C.R. 87

S.C.R. 63

(April 20, 1989)

H.C.R. 199

H.C.R. 171

H.C.R. 84

H.C.R. 191

S.C.R. 105

S.C.R. 96

S.C.R. 67

S.C.R. 111

S.C.R. 102

S.C.R. 104